

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 33-64 are pending in the application, with claims 33, 48, and 55 being the independent claims. Claim 33 is sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Rejection under 35 U.S.C. § 103

Claims 33-64 were rejected under 35 U.S.C. §103(a) as being allegedly obvious over U.S. Patent No. 6,016,480 to Houvener et al. ("Houvener") in view of U.S. Published Patent Appl. No. 2001/0037249 to Fitzgerald et al. ("Fitzgerald"). Applicant respectfully traverses this rejection.

Applicant submits that the Examiner has construed Houvener and Fitzgerald too broadly, and is reading into these references subject matter which is not disclosed therein. Applicants respectfully assert that the Examiner's statements regarding Fitzgerald improperly and impermissibly go beyond the disclosure of the reference and, rather than any evidence of record, find their basis only in speculation, which is against current BPAI and Federal Circuit law. Specifically, both the BPAI and Federal Circuit require the Examiner to show obviousness without relying on mere speculation or conjecture. *See In re Lee*, 277 F.3d 1338, 1342-44 (Fed. Cir. 2002) (discussing the

importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references) (emphasis added). Further, M.P.E.P. Section 2144.03(a) states that “[i]t is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.” (Emphasis added.) (*See In re Zurko*, 258 F.3d 1379, 1385 (Fed. Cir. 2001) (“[T]he Board cannot simply reach conclusions based on its own understanding or experience--or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.”)).

Claims 33, 48, and 55 recite features that distinguish over the applied references. For example, claim 33 recites (emphasis added) “a financial transaction controller coupled to the display, wherein the financial transaction controller selectively allows the display and an input device to operate under the control of the personal device to enable personal functions other than financial transactions to be performed.” Independent claims 48 and 55 each recite at least a similar distinguishing feature with respect to at least the above-noted distinguishing feature of claim 33, using respective language.

On page 2 of the Office Action the Examiner states Houvener does not teach or suggest at least the above-noted distinguishing features, and rather states Fitzgerald allegedly suggests this feature. Applicants cannot find at least the above-noted distinguishing feature of claims 33, 48, and 55 taught or suggested in either reference.

Fitzgerald is directed to a secure Electronic Funds Transfer Point of Sale (“EFTPOS”) device that is attached to a cellular phone in order to establish a data connection between the EFTPOS device and the phone. (Fitzgerald at [0033]). The

EFTPOS device can then access a mobile data network through the attached phone without the need for a separate modem transceiver card and access plan. (Fitzgerald at [0004] - [0005]). When the phone is needed for other uses, it can be unattached from the EFTPOS device and used as a regular phone. (Fitzgerald at [0047]). However, absent the use of improper speculation and conjecture by the Examiner, Fitzgerald nowhere teaches or suggests a “financial transaction controller coupled to the display,” as recited in claim 33.

Assuming, to which Applicant does not acquiesce, that a display located on the EFTPOS device of Fitzgerald is the display of claim 33, Fitzgerald nowhere teaches or suggests allowing that display to be selectively under the control of either the EFTPOS device or the phone, as recited, using respective language, in claims 33, 48, and 55. The only purpose of the phone in Fitzgerald when integrated with the EFTPOS device is to serve as an access point to a communication network. Neither does Fitzgerald teach or suggest that any display on the phone is selectively under the control of the EFTPOS device, as recited using respective language, in claims 33, 48, and 55. Accordingly, it cannot be the case, absent the use of impermissible speculation and conjecture by the Examiner, that Fitzgerald teaches or suggests “a financial transaction controller coupled to the display, wherein the financial transaction controller selectively allows the display and an input device to operate under the control of the personal device to enable personal functions other than financial transactions to be performed,” as recited in claim 33.

Accordingly, the combination of Houvener and Fitzgerald does not teach or suggest each and every feature of independent claims 33, 48, and 55, and therefore does not render them obvious. Claims 34-47, 49-54, and 56-64 are also not rendered obvious

by the combination of Houvener and Fitzgerald for at least the same reasons as claims 33, 48, and 55, from which they respectively depend, and further in view of their own respective features. Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 33-64 under 35 U.S.C. §103(a).

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

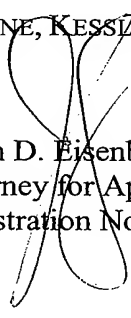
Reply to Office Action of October 2, 2008

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Appl. No. 10/516,445

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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